

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JUAN BERRONES,
Plaintiff,

v.

CHAMPION FOOD SERVICE, INC.,
et al.,
Defendants.

§
§
§
§
§
§
§

CIVIL ACTION NO. H-13-1995

MEMORANDUM AND ORDER

This case is before the Court on the Motion to Dismiss [Doc. # 6] filed by Defendant Champion Food Service #2, Inc. (“CFS2”), to which Plaintiff Juan Berrones filed a Response [Doc. # 15]. Having reviewed the full record and applicable legal authorities, the Court **grants** the Motion to Dismiss with leave for Plaintiff to replead.

Plaintiff worked for Defendant Champion Food Service, Inc. (“CFS”) from June 2012 to December 2012. Plaintiff filed this lawsuit under the Fair Labor Standards Act (“FLSA”) against CFS and CFS2. It is undisputed that Plaintiff never worked for CFS2.


CFS2 filed its Motion to Dismiss pursuant to Rule 12(b)(1) arguing that Berrones, who never worked for it, has no standing to pursue an FLSA claim against it. Plaintiff responded that different corporate entities can constitute a single

“enterprise” for purposes of the FLSA, citing, *inter alia*, *Donovan v. Janitorial Servs., Inc.*, 672 F.2d 528, 530 (5th Cir. 1982). Plaintiff in his Complaint, however, does not allege a factual basis for a finding that CFS and CFS2 constitute a single enterprise such that CFS2 would have liability under the FLSA for any violation by CFS. As a result, it is hereby

ORDERED that Defendant CFS2’s Motion to Dismiss [Doc. # 6] is **GRANTED** without prejudice. It is further

ORDERED that by **October 31, 2013**, Plaintiff shall file an Amended Complaint, consistent with his obligations under Rule 11 of the Federal Rules of Civil Procedure, either alleging a factual basis for his position that CFS and CFS2 constitute a single enterprise for FLSA purposes or abandoning his claims against CFS2.

SIGNED at Houston, Texas this 15th day of **October, 2013**.



Nancy F. Atlas
United States District Judge